U.S. Department of Justice

Immigration and Naturalization Service

B4

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 28 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner was incorporated on November 22, 1998, in the State of Florida. The corporation is a motel. The petitioner seeks to employ the beneficiary as its general manager. It is stated in the record that as the beneficiary is a stock holder, she will receive no wages. The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition on April 27, 1998. In his decision, the director determined that the petitioner had not established that the foreign organization is a "qualifying organization" that is engaged in doing business.

On appeal, the petitioner's president submits additional information and argues that a qualifying relationship exists between the U.S. and foreign entities.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The visa classification that the petitioner seeks is intended for multinational executives and managers. The language of the statute specifically limits this visa classification to those executives and managers who have previously worked abroad for at least one year in the preceding three for the overseas entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary. In order to qualify for this visa classification, the petitioner must establish that there is a qualifying relationship between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the overseas company.

[redacted]

8 CFR 204.5(j)(3) states:

> (i) *Required evidence.* A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:
>
> (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
>
> (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
>
> (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
>
> (D) The prospective United States employer has been doing business for at least one year.

The issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

8 C.F.R. 214.2(l)(1)(ii)(G) states:

> Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(l)(1)(ii)(L) states, in pertinent part:

> Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
>
> (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Title 8 C.F.R. 214.2(l)(1)(ii)(H) states:

> *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In his decision, the director noted that the petitioner had not submitted evidence that the foreign entity had conducted any business activity from March 1997 to September 12, 1997. The director further noted that it is stated in Schedule K of the petitioner's corporate tax return dated September 1, 1997, that the U.S. entity is not a subsidiary of an affiliated group or a parent-subsidiary controlled group.

On appeal, the U.S. entity's president states in part that:

> 1. ...[A]fter examining our file, we found that credit card merchant account statements as recent as August 1997 were submitted even though in your letter dated June 17, 1997, you specifically requested to submit these documents "for the beginning of 1997."
>
> 2. After examining instructions for Schedule K, Form 1120 Instruction book, the term "affiliate group" is defined as "one or more chains of includible corporations connected through stock ownership with a common parent corporation." And "parent-subsidiary controlled group" is defined as "one or more chains of corporations connected through stock ownership." Since the parent entity of both foreign company and US corporation is an individual, and the stock ownership of the parent in each affiliate does not meet the 80% requirement specified by the definition, it was correct for the Vice-President to check "No" on question 4, Schedule K. A copy of page 15 of the instructions is included for your reference.

The record contains the following:

> Share Certificate #3 dated December 20, 1988, reflecting that [redacted] is the owner of 750 shares of the U.S. entity, Shih's Enterprises, Inc.;

Share Certificate #5 dated January 3, 1995, reflecting that [redacted] is the owner of 2,025 shares of the U.S. entity, Shih's Enterprises, Inc.;

Share Certificate #6 dated January 3, 1995, reflecting that [redacted] is the owner of 1,125 shares of the U.S. entity, [redacted]

Share Certificate #7 dated January 3, 1995, reflecting that the beneficiary, [redacted] is the owner of 3,600 shares of the U.S. entity, [redacted]

Voided share certificates #s 1, 2, and 4, of the U.S. entity;

MINUTES No. 15 Annual General Meeting dated 2nd June 1993, indicating in part that a company named [redacted] has the following partners: [redacted] holding 117 company shares; [redacted] holding 66 company shares; and [redacted] (the beneficiary) holding 67 company shares; [redacted] 250 company shares out of a total of 250 company shares.";

Letter from the U.S. entity's president dated November 13, 1995, reflecting in part that the beneficiary is the owner of 54.25% of the foreign entity, [redacted]

The petitioner has submitted untranslated documents pertaining to the foreign entity's business activities that are dated from January 1997 through September 1997. None of the financial data on such documents have been converted to United States currency rates. As such, the evidence does not sufficiently demonstrate that the foreign entity is doing business. Consequently, the petitioner has not demonstrated that the foreign entity is a "qualifying organization." It is further noted that although the U.S. entity's president argues that a qualifying affiliate relationship exists between the U.S. and foreign entities and that the beneficiary owns 54.25% of the foreign entity, the record contains no substantiating documentary evidence such as share certificates for the foreign entity to demonstrate such. Upon review of the record, the petitioner has not sufficiently demonstrated that a qualifying relationship exists between the U.S. and foreign entities. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.